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ABSTRACT

To examine how the Supreme Court has ruled on press claims of a constitutional right to gather information, this paper summarizes important decisions in eight key cases. Although none of the cases clearly outlines and defines the Court's approach to the right of the press and public to gather information, insights may be gained through a consideration of the cases as a whole, and this is the subject of Section I. Section II presents the opinions of certain justices regarding the recognition of a right to gather news and the protection of that right, while Section III describes the limited right to gather news and explains that a general First Amendment right to gather information has never been clearly granted by the Court--in fact, the Court has chosen to take a narrow approach to any concept of a First Amendment Freedom to gather information. This section takes up the questions of differing interests in access to information, the press as a public surrogate, the press versus public access, and defining the press. Section IV, which provides a summary and conclusions, notes that what the Court has said, both directly and by implication, is that the right to gather information is limited both by the law and by reasonable time, place, and manner restrictions that the government can impose on the medias' request for news. It finds that the Court has weighed the competing interests of those seeking access to information against the interests of those who wish to deny access and concludes that the central theme emerging from the described cases is that there is at best a limited First Amendment right of the press to gather information. (CRH)

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THE CONSTITUTIONAL RIGHT TO GATHER INFORMATION: THE LIMITATION OF A FIRST AMENDMENT FREEDOM

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THE CONSTITUTIONAL RIGHT TO GATHER INFORMATION: THE LIMITATION OF A FIRST AMENDMENT FREEDOM

There is little doubt that the United States Supreme Court has granted a rather firm First Amendment freedom for such activities as the right to publish without prior restraint,[1] the right to distribute information,[2] and the right to receive information.[3] The Court has not, however, been as generous when considering a First Amendment right to gather information. Generally speaking, the Court's recognition of a First Amendment right to gather information has been both tentative and limited. A journalist seeking a constitutional right to gather news will find the greatest support from the Court in the context of a criminal trial. However, once the reporter moves beyond the confines of the criminal courtroom, any First Amendment right to gather information, as outlined by the Supreme Court, is at best a limited right. This paper is an examination of how the Court has ruled on press claims of a constitutional right to gather information.

I. The Newsgathering Cases

The Supreme Court has attempted to outline and define the right of the press and public to gather information in eight key cases. They are Zemel v. Rusk,[4] Branzburg v. Hayes,[5] Pell v. Procunier,[6] Saxbe v. Washington Post Co.,[7] Houchins v. KQED, Inc.,[8] Gannett Co., Inc. v. DePasquale,[9] Richmond Newspapers Inc. v. Virginia,[10] and Globe Newspaper Co. v. Superior Court for County of Norfolk.[11] Although not one of these cases clearly outlines how the Court approaches the general issue of the right of the press to gather news, one can gain some insight into the broad parameters involved through consideration of the cases as a whole.

The general issue of the right to gather information was first considered by the Court in Zemel v. Rusk. The case arose shortly after the United States broke off diplomatic relations with Cuba in 1961 and ordered that all outstanding passports held by United States citizens, unless specifically authorized by the Secretary of State, were invalid for travel to Cuba. Louis Zemel said that he wanted to go to Cuba to become a better informed citizen. Following the denial of his request, Zemel brought suit against the Secretary of State and the Attorney General,[13] claiming a violation of his First Amendment right to gather information on the effect that United States foreign policies had on other nations.[14] The Court, in a six member majority, held that Zemel's First Amendment rights were not violated.[15]

The second case to address the issue of a First Amendment right to gather news, at least in part, was Branzburg v. Hayes.[16] This case came about through the consolidation of three lower court cases that centered on the issue of whether a violation of the First Amendment occurs when newsmen are required to appear and testify before a state or federal grand jury.[17] The Court held that this requirement was not a violation of the newsman's First Amendment rights.[18] In the process of reaching this decision, the Court offered some illuminating comments on the right to gather news.

Two years later, two similar cases that dealt with the question of access to prisons were decided by the Court. In Pell v. Procunier[16] a policy of a California prison that allowed newsmen the opportunity to speak with prisoners on a randomly selected basis but not on a basis of selection by the media was held not to be a violation of the media's First Amendment rights to gather news.[20] A similar issue was raised in Saxbe v. Washington Post Co. In this case, a federal prison's policy of forbidding media interviews with individually designated inmates was held not to be a violation of the First Amendment.[21]

The issue of access to prisons was raised again four years later in Houchins v. KQED, Inc.[22] This case arose when a prisoner committed suicide in the Greystone portion of the Alameda County, California jail in 1975. Following the suicide, television station KQED asked for access to the Greystone section so that the facility could be inspected and photographed by television newsmen. After the request was denied, KQED filed suit, alleging that its First Amendment rights were violated by the refusal of access to the Greystone facility. Both a federal district court and the Ninth Circuit Court of Appeals ruled in favor of granting a right of access to the prison. The Supreme Court, however, reversed these decisions, holding that the media had no greater right of access to the prisons than the general public.[23]

The media again lost a case the following year when the Court decided against Gannett Co., Inc. v. DePasquale.[24] In this case, the press was seeking access to a pretrial suppression hearing in a murder prosecution. Both the press and the public had been excluded from this hearing. The New York Court of Appeals upheld the exclusion order. The Supreme Court affirmed, ruling that the Constitution did not provide the press or the public with a right of access to pretrial proceedings.[25]

The results were somewhat different one year later, however, when the Court dealt with the issue of access to an actual trial. In Richmond Newspapers, Inc. v. Virginia[26] the Supreme Court was faced with the question of whether the public and the press had a right under the First and Fourteenth Amendments to attend criminal trials. When the case was decided, the Court said:

> [F]or the first time the Court is asked to decide whether a criminal trial itself may be closed to the public upon the unopposed request of a defendant, without any demonstration that closure is required to protect the defendant's superior right to a fair trial, or that some other overriding consideration requires closure.[27]

After reviewing tne case in some detail, the Court held that "[a]bsent an overriding interest articulated in findings, the trial of a criminal case must be open to the public."[28]

Two years later, the Court reaffirmed the concept that the public and the press have a First Amendment right to attend criminal trials in Globe Newspaper v. Superior Court for County of Norfolk.[29] The Court held that a Massachusetts statute which required the exclusion of the press and from trials of specified sexual offenses involving a victim under the age of 18 violates the First Amendment to the Constitution.[30]

II. Recognition of a Right to Gather News

Although it was not until Richmond Newspapers that the Court recognized a right under the First Amendment to gather information, and then only in the context of a criminal trial, the Court has for several years acknowledged that there should be some protection for newsgathering. The first time a need for protection was raised when Justice Douglas, in his dissent in Zemel, wrote, "The right to know, to converse with others, to consult with them, to observe social, physical, political and other phenomena abroad as well as at home gives meaning and substance to freedom of expression and freedom of the press. Without those contacts First Amendment rights suffer."[31]

An even more forceful statement about the need for some protection for newsgathering was contained in Branzburg when Justice White, writing for the majority, said, "We do not question the significance of free speech, press, or assembly to the country's welfare. Nor is it suggested that newsgathering does not qualify for First Amendment protection; without some protection for seeking out the news, freedom of the press could be eviscerated."[32]

Justice Stewart, in a dissent in Branzburg, reinforced the concept that there should be some protection for newsgathering. He wrote:

> No less important to the news dissemination process is the gathering of information. News must not be necessarily cut off at its source, for without a freedom to acquire information the right to publish would be impermissibly compromised. Accordingly, a right to gather news, of some dimensions, must exist.[33]

The need for some protection to gather news gained further support, in theory at least, from Justice Stevens' dissent in Houchins. He wrote:

> Without some protection for the acquisition of information about the operation of public institutions such as prisons by the public at large, the process of self-governance contemplated by the Framers would be stripped of its substance.
>
> For that reason information gathering is entitled to some measure of constitutional protection.[34]

Although Justice Stevens felt that there should be some protection for the gathering of information, he emphasized that this right belong to all citizens.[35] The extension of the right to gather information to those outside of the press was given further support in the context of criminal trials. Chief Justice Burger, writing for the Court in Richmond Newspapers, stated:

> We hold that the right to attend criminal trials is implicit in the guarantees of the First Amendment; without the freedom to attend such trials, which people have exercised for centuries, important aspects of freedom of speech and "of the press could be eviscerated."[36]

In his concurring opinion, Justice Stevens characterized Richmond Newspapers as "a watershed case." He said, "Until today the Court has accorded virtually absolute protection to the dissemination of information or ideas, but never before has it squarely held that the acquisition of newsworthy matter is entitled to any constitutional protection whatsoever."[37] This point was noted again by the Court in Globe with the observation that Richmond Newspapers "firmly established for the first time that the press and general public have a constitutional right of access to criminal trials."[38]

III. The Limited Right to Gather News

Although the Court has recognized a First Amendment right of access to criminal trials, a general First Amendment right to gather information has never been clearly granted by the Court. In fact, the Court has chosen to take a narrow approach to any concept of a First Amendment freedom to gather information. What the Court has said, both directly and by implication, is that the right to gather information is limited both by the law and by reasonable time, place, and manner restrictions that the government can impose on the media's quest for news. This basic concept of limiting the media's right to gather information."[39] This same concept was repeated in Branzburg when the Court noted that: "reporters remain free to seek news from any source by means within the law."[40]

The Court has also placed limits on newsgathering within criminal trials. In Richmond Newspapers, the Court said that "a trial judge, in the interest of the fair administration of justice, [may] impose reasonable limitations on access to a trial."[41] The power of a trial judge to limit press and public access to criminal trials was reinforced in Globe when the Court noted that "[a] trial court can determine on a case-by-case basis whether closure is necessary to protect the welfare of a minor victim."[42]

A. A Question of Prior Restraint

Whenever journalists are denied a right to gather information, the issue of prior restraint is bound to be raised. The Court has taken the position that denying access to information is not the same as prohibiting the publication of information. In Gannett, Justice Powell noted in his concurring opinion that the trial court's exclusion order "in effect denies access only to one, albiet important, source [of information]. It does not in any way tell the press what it may and may not publish."[43]

A similar line of reasoning was raised before the Court in a brief submitted in Globe Newspapers. The state of Massachusetts argued that denying the press a right to attend a trial when a minor was testifying about a rape was not a form of prior restraint because the media had other sources of information available including the trial transcripts.[44] The Court in Globe Newspapers adopted this line of reasoning in its opinion by noting that the press did indeed have other sources of information concerning the trial testimony and therefore a denial of access could not be considered to be a form of prior restraint.[45]

B. Unwilling Sources of Information

The Court has also placed limits on any First Amendment right to gather information by stating that there is no First Amendment right to force information from unwilling sources. In Houchins the Court held that there is "no basis for the claim that the First Amendment compels others--private persons or governments--to supply information."[46] Justice Potter Stewart, speaking outside of a formal opinion of the Court, offered his view on forcing information from unwilling sources under the guise of a First Amendment right to gather news. Speaking to the Yale Law School in 1974, Justice Stewart said that the First Amendment is not a freedom of information act nor an official secret act.[47]

III. Balancing the Right to Gather Information

Given the concept that any First Amendment right to gather news and information has its limits, the question now becomes one of determining the limits of such a right. In reaching every decision in this area, the Court has used a balancing approach, i.e. weighing the competing interests of those seeking access to the information sought against the interests of those who wish to deny access to the information.

This balancing was discussed on several occasions. Justice Powell's concurring opinion in Gannett, for example, noted that "where competing constitutional rights must be weighed, . . . the often difficult question is whether unrestrained exercise of First Amendment rights poses a serious danger to the fairness of a defendant's trials."[48] The need to use a balancing method in deciding questions of a First Amendment right to information was also stressed by Justice Powell in his dissent in Saxbe[49] and Justice Stevens concurrence in Richmond Newspapers.[50]

A. A Difference of Interests

Any decision involving a balancing of interests must be based upon at least two factors. For one, those seeking to deny or limit access to information and institutions must demonstrate a need for the denial or limitation of access. On the other hand, those seeking access to information and institutions also bear a burden to demonstrate a need for the information sought. The Supreme Court has expressed itself on this need for both parties to show why access to information should be either granted or denied.

In Justice Powell's dissent in Saxbe, the need for government justification of a denial of access was discussed. Justice Powell wrote:

> At some point official restraints on access to news sources, even though not directed solely at the press, may so undermine the function of the First Amendment that it is both appropriate and necessary to require the government to justify such regulations in terms more compelling than discretionary authority and administrative convenience.[51]

The need for the press to demonstrate a need for the information sought was noted in Branzburg. Justice White, writing for the Court, said that there should be a way to "demonstrate that there would be a significant constriction of the flow of news to the public"[52] for the Court to rule in favor of the press. Unhappy with

this requirement of proof by the press, Justice Steward said that, "the impairment of the flow of news cannot, of course, be proved with scientific precision, as the Court seems to demand."[53]

Journalists seeking access to criminal trials may find support for their news-gathering efforts in Globe. Those seeking to deny the press and the public a right of access to trials which involve the disclosure of sensitive information, the Court said, must show that "the denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest."[54] Placing the burden of proof on those who wish to deny the press and the public a right of access to a criminal trial closely follows some of the arguments raised in briefs submitted in Globe.[55]

B. The Press as a Public Surrogate

In arguing for a First Amendment right of access to information, journalists often raise the concept that their newsgathering efforts will help to inform the public about government. This public surrogate function has formed a key theme in several briefs submitted before the Court. For example, it was suggested that a limitation on the ability of the press to gather news would limit the public's right to receive information.[56] The Court has also been presented with the argument that a failure to provide protection for the media to gather information in public institutions could lead to a failure of the public's ability to make informed decisions about government.[57] Denial of press access to pretrial hearings has been equated with denying the public an ability to understand what had occurred at this crucial phase of the trial.[58] It has also been argued that the First Amendment protects the right of the people to be informed about criminal trials.[59]

Additional arguments supporting the view of the press as a public surrogate have focused on the special ability of the press to gather information. For

example, the Court was advised that the press has both a right and a responsibility to gather news that the public is unable to gather. Only the press, it was argued, has the commitment and resources required to dig up information that can be disseminated to the public.[60] Or, as suggested in another brief submitted to the Court, the public relies on the news media for information on how business is conducted in government institutions.[61] Because of this reliance, it has been argued, the main task of the press has become one of focusing public attention on issues of critical importance.[62]

Individual justices of the Supreme Court have referred to the surrogate function of the news media in three of the newsgathering cases previously discussed. For example, Justice Powell's dissent in Saxbe left little doubt about the way he viewed the media's duty as a public surrogate. He wrote:

> In seeking out the news the press . . . acts as an agent of the public at large. It is the means by which the people receive that free flow of information and ideas essential to intelligent self-government. By enabling the public to assert meaningful control over the political process, the press performs a crucial function in effecting the societal purposes of the First Amendment.[63]

The societal function of the press was again discussed by Justice Stevens, dissenting in Houchins. He wrote, "The press may have no greater constitutional right to information about prisons than that possessed by the general public. But when the press does acquire information and disseminate it to the public, it performs an important societal function."[64] A similar view was expressed by Chief Justice Burger when he wrote in Richmond Newspapers that "people now acquire it [information about trials] chiefly through the print and electronic media."[65] Justice Brennan also noted that the press "serves as the 'agent' of interested citizens, and funnels information about trials to the large number of individuals."[66]

C. Press versus Public Access

The joining of a public need to know with the newsgathering function of the press can be helpful for those reporters seeking a First Amendment protection for the newsgathering process. There is, however, a limiting aspect of the public surrogate argument, one which ties the right of the media to gather information with that of the public's right to gather information.

The Court has been urged to grant a special right to gather information that was not available to the general public. It has been argued, for example, that the press should not be literally limited to the public's right of access to a public facility, even though press access is related to the people's right to know. Practically speaking, the argument continued, not all of the public can have access to government facilities such as jails. Yet the public is entitled to be informed about what is going on within these instructions. Therefore the press should be afforded a constitutional right of access sufficient to inform the public of issues dealing with governmental facilities.[67] In other words, the Court was asked to not mechanistically apply the rule that the press has no greater right of access than the public.[68]

The Court's response to these arguments has been consistent. In Branzburg, the Court said that "[n]ewsmen have no constitutional right of access to the scenes of crime or disaster when the general public is excluded . . . ."[69] A similar view was offered in Pell when the Court said, "The Constitution does not . . . require government to accord the press special access to information not shared by members of the public generally."[70] This denial of a special right of access for the press was also part of the Court's opinion in Saxbe.[71]

D. On Defining the Press

One reason the Court may be reluctant to deny a special right to gather information to the press may lie in the problems that may arise in determining just who is a member of the press. The Court raised this very issue in Branzburg by stating that in theory, everyone could be a member of the press. The Court said:

> Sooner or later, it would be necessary to define those categories of newsmen who qualified for the privilege, a questionable procedure in light of the traditional doctrine that liberty of the press is the right of the lonely pamphleteer who uses carbon paper or a mimeograph just as much as of the large metropolitan publisher who utilizes the latest photocomposition methods.[72]

IV. Summary and Conclusions

Throughout the Court's discussion of a First Amendment right to gather information, one central theme emerges. That is, there is at best a limited First Amendment right of the press to gather information.

The limitations placed on this information gathering process become evident when one considers the fact that in only one circumstance, that of the criminal trial, has the Court clearly stated that the press and public have a First Amendment right of access. In that particular circumstance, however, the Court has hastened to add that the trial judge can impose reasonable time, place and manner restrictions on those seeking a wish to exercise their First Amendment right to gather information. Beyond the contest of a criminal trial, the Court has yet to clearly state that there is indeed even a limited First Amendment right to gather information.

The reluctance of the Court to clearly establish a First Amendment right to gather information is especially disturbing when one considers the fact that in seven of the eight information gathering cases, the Court considered the question of access to information directly under government control. If a citizen is

indeed expected to make informed decisions on governmental actions, then it logically follows that a general First Amendment right to gather information from governmental sources would enhance the ability of the press and public to be better informed. Sadly, however, the Court has avoided the opportunity to offer everyone this right.

In considering any right of the press and public to gather information from governmental officials, there needs to be a consideration of competing interests. There may be valid arguments for both granting and denying access to information and facilities. The Court's use of a balancing approach to deciding the question of access is a wise method. Obviously there are no absolutes in this area. The general policy of an assumption of access to governmental information, which can be overridden through the demonstration of a compelling need to deny access to the information sought, is a useful approach to the balancing of competing interests.

Further support for access to governmental information must come from sources other than the Supreme Court. Governmental bodies on all levels should adopt laws and regulations that favor a general policy of access to information yet at the same time provide adequate protection for each individual citizen's right of privacy. In other words, a general policy of open governmental information should be limited only by the overwhelming need of government to protect the privacy and security of all its citizens.

Until the day arrives that the right to gather information receives the constitutional status of the more traditional First Amendment freedoms, those seeking support for their quest for information would be well advised to carry their arguments to all branches and levels of government. This quest for an enhanced right to gather information will be beneficial for everyone; for out of a healthy debate, our democratic system of government grows stronger.

NOTES

[1]New York Times Co. v. United States, 403 U.S. 713 (1971); Near v. Minnesota, 283 U.S. 697 (1931).

[2]Lovell v. Griffin, 303 U.S. 444 (1938).

[3]Lamont v. Postmaster General, 381 U.S. 301 (1965).

[4]381 U.S. 1 (1965).

[5]408 U.S. 665 (1972).

[6]417 U.S. 817 (1974).

[7]417 U.S. 843 (1974).

[8]438 U.S. 1 (1978).

[9]443 U.S. 368 (1979).

[10]448 U.S. 555 (1980).

[11]102 S.Ct. 2613 (1982). As in any classification scheme, these cases can be placed in more than one category. However, there are important comments within the holdings and dicta of each of these cases that helps establish how the Court regards the journalist's constitutional right to gather the news. For this reason, these eight cases are considered to be, for the purposes of this paper, the important newsgathering cases.

[12]381 U.S. 1.

[13]Id. at 3-4.

[14]Id. at 16.

[15]Id. at 20.

[16]408 U.S. 665.

[17]Id. at 667.

[18]Id. at 709.

[19]417 U.S1 817.

[20]Id. at 833-35.

[21]417 U.S. 850.

[22]438 U.S. 1.

[23]Id. at 15-16.

[24]443 U.S. 368.

[25]Id. at 394.

[26]448 U.S. 555.

[27]Id. at 564.

[28]Id. at 581.

[29]102 S.Ct. 2613.

[30]Id. at 2622.

[31]381 U.S. at 24 (Douglas, J., dissenting).

[32]408 U.S. at 681.

[33]408 U.S. at 727-28 (Stewart, J., dissenting).

[34]438 U.S. at 32 (Stevens, J., dissenting) (citations omitted).

[35]Id. at 33.

[36]448 U.S. at 580 (citation omitted).

[37]Id. at 582 (Stevens, J., concurring).

[38]102 S.Ct. at 2618. Although the Court reenforced the concept of a First Amendment right of access to criminal trials in Globe, it should be noted that the Court also clearly stated that this right "is not absolute." Id. at 2620.

[39]381 U.S. at 17.

[40]408 U.S. at 682-83.

[41]448 U.S. at 581 n. 18.

[42]102 S.Ct. at 2621. It is interesting to note that those seeking access to a criminal trial in Globe acknowledged the concept that there is not an absolute First Amendment right of access to criminal trial proceedings; Brief of Appellant at 15-16, Globe Newspaper Co. v. Superior Court for County of Norfolk, 102 S.Ct. 2613 (1982). This same point was made in a brief submitted in behalf of those seeking to deny the press and public a right of access to a criminal trial during testimony by a minor victim of a sexual assault; Brief of Appellee at 22, Globe Newspaper Co. v. Superior Court for Norfolk, 102 S.Ct. 2613 (1982).

[43]443 U.S. at 399 (Powell, J., concurring).

[44]Brief of the Appellee at 44-45, Globe Newspaper Co. v Superior Court for County of Norfolk, 102 S.Ct. 2613 (1982).

[45]102 S.Ct. at 2622.

[46]438 U.S. at 11.

[47]Stewart, Or of the Press, 26 Hastings, L.J. 631, 636 (1975).

[48]443 U.S. at 398-99 (Powell, J., concurring).

[49]417 U.S. at 874 (Powell, J., dissenting).

[50]448 U.S. at 588-89 (Stevens, J., concurring).

[51]U.S. at 860 (Powell, J., dissenting).

[52]408 U.S. at 693.

[53]Id. at 734 (Stewart, J., dissenting).

[54]102 S.Ct. at 2620.

[55]Those seeking access to a criminal trial that involved sensitive information told the Court that those seeking to deny access to the press and public should bear the burden of demonstrating an overriding or compelling interest in closure. It was also argued that this demonstration of need include proof that there was a clear and direct nexus between the state's interests and the closure order. And finally, the Court was told, the need for closure should also demonstrate that the closure order would be the least restrictive means of achieving the state's interests. Or in other words, a "meat axe . . . may not be used where a scapel will suffice."

Closely related to the call for proof that a closure order is needed is the argument that the press has other means of obtaining information about a trial even when a closure order may be issued. This point was noted by the Court in Globe when it said that the press could obtain information about sensitive testimony through court transcripts, conversations with court personnel, or through other sources of information that would not be affected by a closure order, 102 S.Ct. at 2622. The ability of the press to gather information outside of observing sensitive testimony was brought to the Court's attention by those seeking access to the trial, Brief of Appellant at 32-33, Globe Newspaper Co. v. Superior Court for County of Norfolk, 102 S.Ct. 2613, and those seeking to deny access to a trial, Brief of the Appellant at 44, Globe Newspaper Co. v. Superior Court for County of Norfolk, 102 S.Ct. 2613 (1982).

[56]Brief for Petitioner, Paul M. Branzburg at 13, Branzburg v. Hayes, 408 U.S. 665 (1972).

[57]Brief of the National Newspaper Association, The Arizona Newspapers Association, the Pennsylvania Newspaper Publishers Association, The South Dakota Press Association at 6, Houchins v. KQED, Inc., 438 U.S. 1 (1978).

[58]Brief of Petitioner at 14-15, Gannett Co. v. DePasquale, 443 U.S. 368 (1979).

[59]Brief of the Washington Post, American Broadcasting Companies, Inc., CBS Inc., National Broadcasting Company, Inc., The New York Daily News, The Wall Street Journal at 29-30, Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980); Brief of Appellant at 15, Globe Newspaper Co. v. Superior Court for County of Norfolk, 102 S.Ct. 2613 (1982).

[60]Appellant's Reply Brief at 2, Pell v. Procunier, 417 U.S. 817 (1974).

[61]Brief of the National Newspaper Association, The Arizona Newspapers Association, The Pennsylvania Newspaper Publishers Association, The South Dakota Press Association at 4-5, Houchins v. KQED, Inc., 438 U.S. 1 (1978).

[62]Brief for Kearns-Tribune Corporation as Amicus Curiae at 19, Houchins v. KQED, Inc., 438 U.S. 1 (1978).

[63]417 U.S. at 863 (Powell, J., dissenting).

[64]438 U.S. at 39 n. 36 (Stevens, J., dissenting).

[65]448 U.S. at 572-72.

[66]Id. at 586 n. 2 (Brennan, J., concurring).

[67]Brief Amici Curiae of the Reporters Committee for Freedom of the Press Legal Defense Fund, American Society of Newspaper Editors, and Radio-Television News Directors Association at 12, Houchins v. KQED, Inc., 438 U.S. 1 (1978).

[68]Brief for Kearns-Tribune Corporation as Amicus Curiae at 19, Houchins v. KQED, Inc., 438 U.S. 1 (1978).

[69]408 U.S. at 684-85.

[70]417 U.S. at 834.

[71]417 U.S. at 833.

[72]408 U.S. at 704.